

## **IC 23-1-33**

### **Chapter 33. Board of Directors Generally**

#### **IC 23-1-33-1**

##### **Necessity of board of directors; powers**

Sec. 1. (a) Except as provided in subsection (c), each corporation must have a board of directors.

(b) All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation.

(c) A corporation having fifty (50) or fewer shareholders may dispense with the board of directors or limit the authority of the board by describing in its articles of incorporation who will perform some or all of the duties of the board of directors. If a corporation elects to dispense with or limit the authority of the board of directors, any reference to the board of directors by this article also includes those persons described in the articles of incorporation who will perform the duties of the board of directors.

*As added by P.L.149-1986, SEC.17.*

#### **IC 23-1-33-2**

##### **Qualifications**

Sec. 2. The articles of incorporation or bylaws may prescribe qualifications for directors. A director need not be a resident of this state or a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe.

*As added by P.L.149-1986, SEC.17.*

#### **IC 23-1-33-3**

##### **Number of directors; time for electing**

Sec. 3. (a) A board of directors must consist of one (1) or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

(b) The articles of incorporation or bylaws may establish a variable range for the size of the board of directors by fixing a minimum and maximum number of directors. If a variable range is established, the number of directors may be fixed or changed from time to time, within the minimum and maximum, by the board of directors.

(c) Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter unless their terms are staggered under section 6 of this chapter.

*As added by P.L.149-1986, SEC.17.*

#### **IC 23-1-33-4**

##### **Election of directors by classes of shares**

Sec. 4. If the articles of incorporation authorize dividing the shares into classes, the articles may also authorize the election of all or a specified number of directors by the holders of one (1) or more

authorized classes of shares. Each class (or classes) of shares entitled to elect one (1) or more directors is a separate voting group for purposes of the election of directors.

*As added by P.L.149-1986, SEC.17.*

#### **IC 23-1-33-5**

##### **Terms of office**

Sec. 5. (a) The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

(b) The terms of all other directors expire at the next annual shareholders' meeting following their election unless their terms are staggered under section 6 of this chapter.

(c) A decrease in the number of directors does not shorten an incumbent director's term.

(d) The term of a director elected to fill a vacancy expires at the end of the term for which the director's predecessor was elected.

(e) Despite the expiration of a director's term, the director continues to serve until a successor is elected and qualifies or until there is a decrease in the number of directors.

*As added by P.L.149-1986, SEC.17.*

#### **IC 23-1-33-6**

##### **Staggered terms**

Sec. 6. (a) The articles of incorporation or the bylaws may provide for staggering their terms by dividing the total number of directors into either:

(1) two (2) groups, with each group containing one-half (1/2) of the total, as near as may be; or

(2) if there are more than two (2) directors, three (3) groups, with each group containing one-third (1/3) of the total, as near as may be.

(b) In the event that terms are staggered under subsection (a), the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be chosen for a term of two (2) years or three (3) years, as the case may be, to succeed those whose terms expire.

*As added by P.L.149-1986, SEC.17. Amended by P.L.107-1987, SEC.9; P.L.277-2001, SEC.5.*

#### **IC 23-1-33-7**

##### **Resignation**

Sec. 7. (a) A director may resign at any time by delivering written notice:

(1) to the board of directors, its chairman, or the secretary of the corporation; or

(2) if the articles of incorporation or bylaws so provide, to another designated officer.

(b) A resignation is effective when the notice is delivered unless the notice specifies a later effective date.

*As added by P.L.149-1986, SEC.17. Amended by P.L.107-1987, SEC.10.*

### **IC 23-1-33-8**

#### **Removal**

Sec. 8. (a) Directors may be removed in any manner provided in the articles of incorporation. In addition, the shareholders or directors may remove one (1) or more directors with or without cause unless the articles of incorporation provide otherwise.

(b) If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove that director.

(c) If cumulative voting is authorized, a director may not be removed if the number of votes sufficient to elect the director under cumulative voting is voted against the director's removal. If cumulative voting is not authorized, a director may be removed only if the number of votes cast to remove the director exceeds the number of votes cast not to remove the director.

(d) A director may be removed by the shareholders, if they are otherwise authorized to do so, only at a meeting called for the purpose of removing the director and the meeting notice must state that the purpose, or one (1) of the purposes, of the meeting is removal of the director.

*As added by P.L.149-1986, SEC.17.*

### **IC 23-1-33-9**

#### **Vacancies**

Sec. 9. (a) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(1) the board of directors may fill the vacancy; or

(2) if the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(b) If the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group are entitled to vote to fill the vacancy if it is filled by the shareholders.

(c) A vacancy that will occur at a specific later date (by reason of a resignation effective at a later date under section 7(b) of this chapter or otherwise) may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

*As added by P.L.149-1986, SEC.17.*

### **IC 23-1-33-10**

**Compensation**

Sec. 10. Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

*As added by P.L.149-1986, SEC.17.*